

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WILLIAM L RIDENOUR, *et al.*

Plaintiffs,

v.

**OHIO DEPARTMENT OF
REHABILITATION AND
CORRECTION, *et al.***

Defendants.

Case No. 2:10-cv-493

Judge Peter C. Economus

MEMORANDUM OPINION AND ORDER

Plaintiffs filed this action pursuant to 42 U.S.C. § 1983 alleging exposure to friable asbestos at the Chillicothe Correctional Institution. This matter is before the Court on Defendants' motion to dismiss Plaintiffs' claims for injunctive and declaratory relief. (Dkt. 126.) Defendants assert that such claims were adjudicated pursuant to the settlement of a class action in this Court, *Smith v. Ohio Department of Rehabilitation and Correction*, No. 2:08-cv-15 (the "*Smith* case"). In a Report and Recommendation dated October 4, 2013, the Magistrate Judge found that Plaintiffs' claims for injunctive and declaratory relief were adjudicated and dismissed with prejudice in the *Smith* case and recommended that such claims be dismissed in this case. (Dkt. 147.)

Plaintiffs objected, arguing that the *Smith* Court "did not dismiss the declaratory relief claims because those claims did not exist in the Amended Complaint that the court ultimately based the settlement agreement on." (Dkt. 151 at 3.) As Defendants point out in their response (dkt. 153), this is incorrect. The *Smith* dismissal was based on the First Amended Complaint filed on November 11, 2008, which seeks both declaratory judgment and injunctive relief. (*Smith* case, dkt. 18 at ¶¶ 98–101, Prayer for Relief ¶¶ 3–5.) The Magistrate Judge correctly

determined that Plaintiffs' claims for injunctive and declaratory relief are the same as the claims in *Smith* that were dismissed with prejudice.

For the reasons set forth in the Magistrate Judge's Report and Recommendation, the Court therefore **GRANTS** Defendants' motion (dkt. 126), **ADOPTS** the Report and Recommendation (dkt. 147), and **OVERRULES** Plaintiffs' objections (dkt. 151). Plaintiffs' claims for injunctive and declaratory relief are hereby **DISMISSED**.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE